

REFERENCE TITLE: home equity theft prevention act

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

## **SB 1349**

Introduced by  
Senators McCune Davis, Aguirre; Representative Meza; Senators Arzberger,  
Hale, Landrum Taylor, Rios; Representative Campbell CH

AN ACT

AMENDING SECTIONS 6-901 AND 6-941, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 4; RELATING TO HOME EQUITY PURCHASERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 6-901, Arizona Revised Statutes, is amended to  
3 read:

4 6-901. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Affiliate" means an entity which directly or indirectly, through  
7 one or more intermediaries, controls, is controlled by or is under common  
8 control with the entity specified.

9 2. "Compensation" means anything of value or any benefit, including  
10 points, commissions, bonuses, referral fees, loan origination fees and other  
11 similar fees but excluding periodic interest resulting from the application  
12 of the note rate of interest to the outstanding principal balance remaining  
13 unpaid from time to time.

14 3. "Investor" means a person who lends or invests money in mortgage  
15 loans.

16 4. "License" means a license issued under this article.

17 5. "Licensee" means a person licensed under this article.

18 6. "Mortgage broker" means a person who is not exempt under section  
19 6-902 and who for compensation or in the expectation of compensation either  
20 directly or indirectly makes, negotiates or offers to make or negotiate a  
21 mortgage loan.

22 7. "Mortgage loan" means a loan secured by a mortgage or deed of trust  
23 or any lien interest on real estate located in this state created with the  
24 consent of the owner of the real estate, INCLUDING ANY MORTGAGE LOAN  
25 TRANSACTION DESCRIBED IN TITLE 33, CHAPTER 6, ARTICLE 4.

26 8. "Mortgage loan closing" means the day by which all documents  
27 relating to the mortgage loan have been executed and recorded and all monies  
28 have been accounted for under the terms of the escrow instructions.

29 Sec. 2. Section 6-941, Arizona Revised Statutes, is amended to read:

30 6-941. Definitions

31 In this article, unless the context otherwise requires:

32 1. "Affiliate" means an entity which directly or indirectly, through  
33 one or more intermediaries, controls, is controlled by or is under common  
34 control with the entity specified.

35 2. "Compensation" means anything of value or any benefit, including  
36 points, commissions, bonuses, referral fees, loan origination fees and other  
37 similar fees but excluding periodic interest resulting from the application  
38 of the note rate of interest to the outstanding principal balance remaining  
39 unpaid from time to time.

40 3. "License" means a license issued under this article.

41 4. "Licensee" means a person licensed under this article.

42 5. "Mortgage banker" means a person who is not exempt under section  
43 6-942 and who for compensation or in the expectation of compensation either  
44 directly or indirectly makes, negotiates or offers to make or negotiate a  
45 mortgage banking loan or a mortgage loan.

1           6. "Mortgage banking loan" means a loan which is funded exclusively  
2 from the mortgage banker's own resources, which is directly or indirectly  
3 secured by a mortgage or deed of trust or any lien interest on real estate  
4 located in this state and which is created with the consent of the owner of  
5 the real property. For the purposes of this paragraph, "own resources" means  
6 any of the following:

7           (a) Cash, corporate capital, warehouse credit lines at commercial  
8 banks, savings banks or savings and loan associations or other sources that  
9 are liability items on the mortgage banker's financial statements for which  
10 its assets are pledged.

11           (b) Correspondent contracts between the mortgage banker and a bank,  
12 savings bank, trust company, savings and loan association, credit union,  
13 profit sharing or pension trust, consumer lender or insurance company.

14           (c) The mortgage banker's affiliates' cash, corporate capital,  
15 warehouse credit lines at commercial banks or other sources that are  
16 liability items on the affiliates' financial statements for which the  
17 affiliates' assets are pledged.

18           7. "Mortgage banking loan closing" means the day by which all  
19 documents relating to the mortgage banking loan or mortgage loan have been  
20 executed and recorded and all monies have been accounted for.

21           8. "Mortgage loan" means any loan, other than a mortgage banking loan,  
22 secured by a mortgage or deed of trust or any lien interest on real estate  
23 located in this state and created with the consent of the owner of the real  
24 estate, **INCLUDING ANY MORTGAGE LOAN TRANSACTION DESCRIBED IN TITLE 33,**  
25 **CHAPTER 6, ARTICLE 4.**

26           Sec. 3. Title 33, chapter 6, Arizona Revised Statutes, is amended by  
27 adding article 4, to read:

28                           ARTICLE 4. HOME EQUITY PURCHASERS

29           **33-761. Definitions**

30           **IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:**

31           1. **"BONA FIDE PURCHASER OR ENCUMBRANCER FOR VALUE" MEANS ANYONE ACTING**  
32 **IN GOOD FAITH WHO PURCHASES THE RESIDENTIAL REAL PROPERTY FROM THE EQUITY**  
33 **PURCHASER FOR VALUABLE CONSIDERATION OR PROVIDES THE EQUITY PURCHASER WITH A**  
34 **MORTGAGE OR DEED OF TRUST OR PROVIDES A SUBSEQUENT BONA FIDE PURCHASER WITH A**  
35 **MORTGAGE OR DEED OF TRUST IF THE BONA FIDE PURCHASER HAD NO NOTICE OF THE**  
36 **EQUITY SELLER'S CONTINUING RIGHT TO, OR EQUITY IN, THE PROPERTY BEFORE THE**  
37 **ACQUISITION OF TITLE OR ENCUMBRANCE OR OF ANY VIOLATION OF THIS ARTICLE BY**  
38 **THE EQUITY PURCHASER AS RELATED TO THE PROPERTY.**

39           2. **"BUSINESS DAY" MEANS ANY CALENDAR DAY EXCLUDING SATURDAY, SUNDAY,**  
40 **OR PUBLIC HOLIDAYS.**

41           3. **"COVERED CONTRACT" MEANS ANY CONTRACT, AGREEMENT OR ARRANGEMENT, OR**  
42 **ANY TERM OF A CONTRACT, AGREEMENT OR ARRANGEMENT, BETWEEN AN EQUITY PURCHASER**  
43 **AND EQUITY SELLER THAT IS EITHER:**

- 1 (a) INCIDENT TO THE SALE OF A RESIDENCE IN FORECLOSURE.  
2 (b) INCIDENT TO THE SALE OF A RESIDENCE IN FORECLOSURE OR DEFAULT IF  
3 THE CONTRACT, AGREEMENT OR ARRANGEMENT INCLUDES A RECONVEYANCE ARRANGEMENT.  
4 4. "DEFAULT" MEANS THAT THE EQUITY SELLER IS TWO MONTHS OR MORE BEHIND  
5 IN PAYMENTS ON A MORTGAGE OR A DEED OF TRUST.  
6 5. "EQUITY PURCHASER" MEANS ANY PERSON WHO ACQUIRES TITLE TO ANY  
7 RESIDENCE THAT IS THE SUBJECT OF A NOTICE OF TRUSTEE SALE, THAT IS IN  
8 FORECLOSURE OR, IF APPLICABLE, THAT IS IN DEFAULT, OR THE PERSON'S  
9 REPRESENTATIVE, EXCEPT A PERSON WHO ACQUIRES TITLE AS FOLLOWS:  
10 (a) TO USE THE PROPERTY AS A PRIMARY RESIDENCE AND THE PERSON ACTUALLY  
11 USES THE PROPERTY AS A PRIMARY RESIDENCE.  
12 (b) BY A TRUSTEE'S DEED ON SALE PURSUANT TO LAW.  
13 (c) AT ANY SALE OF PROPERTY AUTHORIZED BY STATUTE.  
14 (d) BY ORDER OR JUDGMENT OF ANY COURT.  
15 (e) FROM A SPOUSE OR FROM A PARENT, GRANDPARENT, CHILD, GRANDCHILD OR  
16 SIBLING OF THE PERSON OR THE PERSON'S SPOUSE.  
17 (f) AS AN INTERNAL REVENUE SERVICE DESIGNATED NONPROFIT HOUSING  
18 ORGANIZATION OR AS A PUBLIC HOUSING AGENCY.  
19 (g) AS A BONA FIDE PURCHASER OR ENCUMBRANCER FOR VALUE.  
20 6. "EQUITY SELLER" MEANS A NATURAL PERSON WHO IS A PROPERTY OWNER OR  
21 HOMEOWNER AT THE TIME OF THE EQUITY SALE.  
22 7. "FORECLOSURE" MEANS THAT AN ACTION PURSUANT TO SECTION 33-721 HAS  
23 BEEN FILED TO FORECLOSE A MORTGAGE OR DEED OF TRUST SECURED BY THE SUBJECT  
24 PROPERTY OR THE SUBJECT PROPERTY IS ON AN ACTIVE PROPERTY TAX LIEN SALE LIST.  
25 8. "PROPERTY OWNER" OR "HOMEOWNER" MEANS ANY OR ALL RECORD TITLE  
26 OWNERS OF THE RESIDENTIAL REAL PROPERTY IN FORECLOSURE OR, IF APPLICABLE, IN  
27 DEFAULT AT THE TIME OF THE EQUITY SALE.  
28 9. "RECONVEYANCE ARRANGEMENT" MEANS:  
29 (a) THE TRANSFER OF TITLE TO RESIDENTIAL REAL PROPERTY BY AN EQUITY  
30 SELLER WHO IS IN DEFAULT OR FORECLOSURE, EITHER BY TRANSFER OF INTEREST FROM  
31 AN EQUITY SELLER TO AN EQUITY PURCHASER OR BY CREATION OF A MORTGAGE, DEED OF  
32 TRUST OR OTHER LIEN OR ENCUMBRANCE DURING THE TIME OF DEFAULT OR FORECLOSURE  
33 THAT ALLOWS THE EQUITY PURCHASER TO OBTAIN LEGAL OR EQUITABLE TITLE TO ALL OR  
34 PART OF THE PROPERTY.  
35 (b) THE SUBSEQUENT CONVEYANCE OR PROMISE OF A SUBSEQUENT CONVEYANCE,  
36 OF AN INTEREST, INCLUDING A PURCHASE AGREEMENT, OPTION TO PURCHASE OR LEASE,  
37 BACK TO THE EQUITY SELLER BY THE EQUITY PURCHASER THAT ALLOWS THE EQUITY  
38 SELLER TO REGAIN POSSESSION OF THE PROPERTY.  
39 10. "REPRESENTATIVE" MEANS A PERSON WHO IN ANY MANNER SOLICITS,  
40 INDUCES, ARRANGES OR CAUSES ANY EQUITY SELLER TO TRANSFER TITLE OR SOLICITS  
41 ANY MEMBER OF THE EQUITY SELLER'S FAMILY OR HOUSEHOLD TO INDUCE OR CAUSE ANY  
42 EQUITY SELLER TO TRANSFER TITLE TO THE RESIDENCE IN FORECLOSURE OR, IF  
43 APPLICABLE, IN DEFAULT TO THE EQUITY PURCHASER.  
44 11. "RESIDENCE" AND "RESIDENTIAL REAL PROPERTY" MEANS RESIDENTIAL REAL  
45 PROPERTY CONSISTING OF ONE TO FOUR FAMILY DWELLING UNITS, ONE OF WHICH THE

1 EQUITY SELLER OCCUPIES OR OCCUPIED AT A TIME IMMEDIATELY BEFORE THE EQUITY  
2 SALE AS A PRIMARY RESIDENCE.

3 12. "SALE OF A RESIDENCE" INCLUDES A TRANSACTION IN WHICH AN EQUITY  
4 SELLER RECEIVES CONSIDERATION FROM THE EQUITY PURCHASER AND A TRANSACTION  
5 INVOLVING A TRANSFER OF TITLE TO THE EQUITY PURCHASER IN WHICH NO  
6 CONSIDERATION IS PROVIDED TO THE EQUITY SELLER.

7 33-762. Licensing of equity purchaser required

8 A PERSON SHALL NOT ACT AS AN EQUITY PURCHASER IN THIS STATE IF THE  
9 PERSON IS NOT LICENSED PURSUANT TO TITLE 6, CHAPTER 9, ARTICLE 1 OR 2.

10 33-763. Covered contracts; notices

11 A. EVERY COVERED CONTRACT AND NOTICE OF CANCELLATION ATTACHED TO THE  
12 CONTRACT SHALL BE WRITTEN IN LETTERS OF A SIZE EQUAL TO AT LEAST TWELVE-POINT  
13 BOLD TYPE, IN ENGLISH OR IN BOTH ENGLISH AND SPANISH, IF SPANISH IS THE  
14 PRIMARY LANGUAGE OF THE EQUITY SELLER, AND SHALL BE FULLY COMPLETED AND  
15 SIGNED AND DATED BY THE EQUITY SELLER AND EQUITY PURCHASER. ANY INSTRUMENT  
16 OF CONVEYANCE SHALL BECOME EFFECTIVE NO SOONER THAN MIDNIGHT OF THE FIFTH  
17 BUSINESS DAY AFTER THE DATE ON WHICH THE COVERED CONTRACT IS EXECUTED.

18 B. ALL COVERED CONTRACTS SHALL CONTAIN THE ENTIRE AGREEMENT OF THE  
19 PARTIES AND SHALL INCLUDE THE FOLLOWING TERMS:

20 1. THE NAME, BUSINESS ADDRESS AND THE TELEPHONE NUMBER OF THE EQUITY  
21 PURCHASER.

22 2. THE ADDRESS OF THE RESIDENCE IN FORECLOSURE OR, IF APPLICABLE,  
23 DEFAULT.

24 3. THE TOTAL CONSIDERATION TO BE GIVEN BY THE EQUITY PURCHASER IN  
25 CONNECTION WITH OR INCIDENT TO THE SALE.

26 4. A COMPLETE DESCRIPTION OF THE TERMS OF PAYMENT OR OTHER  
27 CONSIDERATION, INCLUDING ANY SERVICES OF ANY NATURE THE EQUITY PURCHASER  
28 AGREES TO PERFORM FOR THE EQUITY SELLER BEFORE OR AFTER THE SALE.

29 5. THE TIME, IF ANY, AT WHICH PHYSICAL POSSESSION OF THE RESIDENCE IS  
30 TO BE TRANSFERRED TO THE EQUITY PURCHASER AND THE RESIDENCE VACATED BY THE  
31 EQUITY SELLER.

32 6. THE TERMS OF ANY RENTAL OR LEASE AGREEMENT.

33 7. THE TERMS OF ANY RECONVEYANCE ARRANGEMENT.

34 8. A NOTICE OF CANCELLATION AS PROVIDED IN SUBSECTION E OF THIS  
35 SECTION.

36 9. THE FOLLOWING NOTICE, WHICH MUST CONTAIN THE NAME OF THE EQUITY  
37 PURCHASER AND THE DATE AND TIME BY WHICH THE COVERED CONTRACT MUST BE  
38 CANCELED, SHALL BE COMPLETED BY THE EQUITY PURCHASER AND SHALL APPEAR ON THE  
39 CONTRACT IN IMMEDIATE PROXIMITY TO THE SPACE RESERVED FOR THE EQUITY SELLER'S  
40 SIGNATURE AND SHALL BE IN AT LEAST FOURTEEN-POINT BOLD TYPE IF THE COVERED  
41 CONTRACT IS PRINTED OR IN CAPITAL LETTERS IF THE COVERED CONTRACT IS TYPED:



1 LETTERS IF THE COVERED CONTRACT IS TYPED. THIS FORM SHALL BE ATTACHED TO THE  
2 COVERED CONTRACT, SHALL BE EASILY DETACHABLE AND SHALL CONTAIN, IN AT LEAST  
3 TWELVE-POINT TYPE IF THE COVERED CONTRACT IS PRINTED OR IN CAPITAL LETTERS IF  
4 THE COVERED CONTRACT IS TYPED, THE FOLLOWING STATEMENT WRITTEN IN THE SAME  
5 LANGUAGE USED IN THE COVERED CONTRACT:

6 NOTICE OF CANCELLATION

7 THIS CONTRACT WAS ENTERED INTO ON \_\_\_\_\_ (ENTER DATE COVERED  
8 CONTRACT SIGNED) \_\_\_\_\_. YOU MAY CANCEL THIS CONTRACT FOR THE SALE  
9 OF YOUR HOUSE, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME  
10 BEFORE MIDNIGHT OF \_\_\_\_\_ (ENTER DATE) \_\_\_\_\_. TO CANCEL THIS  
11 TRANSACTION, PERSONALLY DELIVER A SIGNED AND DATED COPY OF THIS  
12 CANCELLATION NOTICE, OR SEND IT BY FAX, UNITED STATES MAIL OR AN  
13 ESTABLISHED COMMERCIAL LETTER DELIVERY SERVICE, INDICATING  
14 CANCELLATION TO \_\_\_\_\_ (NAME OF PURCHASER) \_\_\_\_\_, AT \_\_\_\_\_ (STREET  
15 ADDRESS OF PURCHASER'S PLACE OF BUSINESS AND FAX NUMBER, IF  
16 ANY) \_\_\_\_\_ NOT LATER THAN MIDNIGHT OF \_\_\_\_\_ (ENTER DATE) \_\_\_\_\_. IF  
17 YOU WISH TO CANCEL THIS CONTRACT, SIGN AND DATE BOTH COPIES AND  
18 RETURN ONE COPY IMMEDIATELY TO THE PURCHASER. I HEREBY CANCEL  
19 THIS TRANSACTION.

20 \_\_\_\_\_  
21 (SELLER'S SIGNATURE)

\_\_\_\_\_ (DATE)

22 F. THE EQUITY PURCHASER SHALL PROVIDE EACH EQUITY SELLER WITH TWO  
23 COPIES OF THE COVERED CONTRACT AND ATTACHED NOTICE OF CANCELLATION. THE  
24 EQUITY PURCHASER SHALL ACCURATELY ENTER THE DATE ON WHICH THE RIGHT TO CANCEL  
25 ENDS.

26 33-764. False or misleading statements; right to rescission;  
27 prohibited acts; violations; classification

28 A. BEFORE MIDNIGHT OF THE FIFTH BUSINESS DAY AFTER THE DATE ON WHICH  
29 THE COVERED CONTRACT IS EXECUTED, THE EQUITY PURCHASER SHALL NOT DO ANY OF  
30 THE FOLLOWING:

31 1. ACCEPT FROM ANY EQUITY SELLER AN EXECUTION OF, OR INDUCE ANY EQUITY  
32 SELLER TO EXECUTE, ANY INSTRUMENT OF CONVEYANCE OF ANY INTEREST IN THE  
33 RESIDENCE IN FORECLOSURE OR, IF APPLICABLE, IN DEFAULT.

34 2. RECORD WITH THE COUNTY RECORDER ANY DOCUMENT, INCLUDING ANY  
35 INSTRUMENT OF CONVEYANCE, SIGNED BY THE EQUITY SELLER.

36 3. TRANSFER OR ENCUMBER OR PURPORT TO TRANSFER OR ENCUMBER TO ANY  
37 THIRD PARTY ANY INTEREST IN THE RESIDENCE IN FORECLOSURE OR, IF APPLICABLE,  
38 IN DEFAULT.

39 4. PAY THE EQUITY SELLER ANY CONSIDERATION.

40 5. SUGGEST, ENCOURAGE OR PROVIDE ANY FORM THAT ALLOWS THE EQUITY  
41 SELLER TO WAIVE THE EQUITY SELLER'S RIGHT TO CANCEL OR RESCIND UNDER THIS  
42 SECTION.

43 B. AN EQUITY PURCHASER SHALL NOT MAKE A FALSE OR MISLEADING STATEMENT  
44 REGARDING:

- 1           1. THE VALUE OF THE RESIDENCE IN FORECLOSURE OR, IF APPLICABLE, IN  
2     DEFAULT.
- 3           2. THE AMOUNT OF PROCEEDS THE EQUITY SELLER WILL RECEIVE AFTER A  
4     FORECLOSURE SALE PURSUANT TO ARTICLE 2 OF THIS CHAPTER OR A TRUSTEE'S SALE  
5     PURSUANT TO CHAPTER 6.1 OF THIS TITLE.
- 6           3. THE TIMING OF THE JUDICIAL FORECLOSURE PROCESS OR SALE OF TRUST  
7     PROPERTY.
- 8           4. ANY CONTRACT TERM.
- 9           5. THE EQUITY SELLER'S RIGHTS OR OBLIGATIONS INCIDENT TO OR ARISING  
10    OUT OF THE SALE TRANSACTION.
- 11          6. THE NATURE OF ANY DOCUMENT THAT THE EQUITY PURCHASER INDUCES THE  
12    EQUITY SELLER TO SIGN.
- 13          7. THE SALE OF THE RESIDENCE IN FORECLOSURE OR, IF APPLICABLE, IN  
14    DEFAULT, OR CONCERNING THE RECONVEYANCE ARRANGEMENT.
- 15          C. AN EQUITY PURCHASER SHALL NOT REPRESENT, DIRECTLY OR INDIRECTLY,  
16    THAT:
  - 17           1. THE EQUITY PURCHASER IS ACTING AS AN ADVISOR OR A CONSULTANT FOR OR  
18           IN ANY OTHER MANNER IS ACTING ON BEHALF OF THE EQUITY SELLER.
  - 19           2. THE EQUITY PURCHASER IS CERTIFIED OR LICENSED IF THIS IS NOT TRUE,  
20           OR THAT THE EQUITY PURCHASER IS NOT LICENSED IF THE EQUITY PURCHASER IS  
21           ACTUALLY LICENSED.
  - 22           3. THE EQUITY PURCHASER IS ASSISTING THE EQUITY SELLER TO SAVE THE  
23           HOUSE UNLESS THE EQUITY PURCHASER HAS A GOOD FAITH BASIS FOR THE  
24           REPRESENTATION.
  - 25           4. THE EQUITY PURCHASER IS ASSISTING THE EQUITY SELLER IN PREVENTING A  
26           COMPLETED FORECLOSURE OR TRUSTEE'S SALE UNLESS THE EQUITY PURCHASER HAS A  
27           GOOD FAITH BASIS FOR THE REPRESENTATION.
- 28          D. IT IS UNLAWFUL:
  - 29           1. FOR ANY EQUITY PURCHASER TO INITIATE, ENTER INTO, NEGOTIATE OR  
30           CONSUMMATE ANY COVERED CONTRACT INVOLVING RESIDENTIAL REAL PROPERTY IN  
31           FORECLOSURE OR SUBJECT TO A TRUSTEE'S SALE, OR, IF APPLICABLE, IN DEFAULT IF  
32           THE EQUITY PURCHASER, BY THE TERMS OF SUCH A COVERED CONTRACT, TAKES  
33           UNCONSCIONABLE ADVANTAGE OF THE EQUITY SELLER.
  - 34           2. FOR ANY EQUITY PURCHASER TO OPERATE IN THIS STATE WITHOUT A LICENSE  
35           PURSUANT TO TITLE 6, CHAPTER 9, ARTICLE 1 OR 2, UNLESS OTHERWISE PROVIDED BY  
36           LAW.
- 37          E. ANY TRANSACTION INVOLVING RESIDENTIAL REAL PROPERTY IN FORECLOSURE  
38    OR, IF APPLICABLE, IN DEFAULT THAT IS IN MATERIAL VIOLATION OF SECTION  
39    33-763, SUBSECTION A, B OR E, SECTION 33-765, OR THIS SECTION IS VOIDABLE AND  
40    MAY BE RESCINDED BY THE EQUITY SELLER WITHIN TWO YEARS AFTER THE DATE OF THE  
41    RECORDING OF THE CONVEYANCE OF THE RESIDENTIAL REAL PROPERTY IN FORECLOSURE  
42    OR SUBJECT TO A TRUSTEE'S SALE, OR, IF APPLICABLE, IN DEFAULT. THE  
43    RESCISSION IS EFFECTIVE BY GIVING WRITTEN NOTICE TO THE EQUITY PURCHASER AND  
44    THE EQUITY PURCHASER'S SUCCESSOR IN INTEREST, IF THE SUCCESSOR IS NOT A BONA  
45    FIDE PURCHASER OR ENCUMBRANCER FOR VALUE AS PROVIDED IN SUBSECTION F OF THIS

1 SECTION, AND BY RECORDING THE NOTICE WITH THE COUNTY RECORDER OF THE COUNTY  
2 IN WHICH THE PROPERTY IS LOCATED WITHIN TWO YEARS OF THE DATE AFTER THE  
3 RECORDING OF THE CONVEYANCE TO THE EQUITY PURCHASER. THE NOTICE OF  
4 RESCISSION SHALL CONTAIN THE NAME OF THE EQUITY SELLER AND THE NAME OF THE  
5 EQUITY PURCHASER IN ADDITION TO ANY SUCCESSOR IN INTEREST HOLDING RECORD  
6 TITLE TO THE RESIDENTIAL REAL PROPERTY AND SHALL PARTICULARLY DESCRIBE THE  
7 RESIDENTIAL REAL PROPERTY. THE EQUITY PURCHASER AND THE EQUITY PURCHASER'S  
8 SUCCESSOR IN INTEREST, IF THE SUCCESSOR IS NOT A BONA FIDE PURCHASER OR  
9 ENCUMBRANCER FOR VALUE AS SET FORTH IN SUBSECTION F OF THIS SECTION, SHALL  
10 HAVE TWENTY DAYS AFTER THE DELIVERY OF THE NOTICE IN WHICH TO RECONVEY TITLE  
11 TO THE PROPERTY FREE AND CLEAR OF ENCUMBRANCES CREATED SUBSEQUENT TO THE  
12 RESCINDED TRANSACTION AND DUE TO THE ACTIONS OF THE EQUITY PURCHASER. AS A  
13 CONDITION OF THE RECONVEYANCE OF TITLE, THE EQUITY SELLER SHALL RETURN TO THE  
14 EQUITY PURCHASER ANY CONSIDERATION RECEIVED FROM THE EQUITY PURCHASER AS PART  
15 OF THE ORIGINAL TRANSACTION. ON FAILURE TO RECONVEY TITLE WITHIN THIS TIME,  
16 THE EQUITY SELLER MAY BRING AN ACTION TO ENFORCE THE RESCISSION AND FOR  
17 CANCELLATION OF THE COVERED CONTRACT AND DEED.

18 F. SUBSECTION E OF THIS SECTION DOES NOT AFFECT THE INTEREST OF A BONA  
19 FIDE PURCHASER OR ENCUMBRANCER FOR VALUE IF THE PURCHASE OR ENCUMBRANCE  
20 OCCURRED BEFORE THE RECORDING OF THE NOTICE OF RESCISSION PURSUANT TO  
21 SUBSECTION E OF THIS SECTION. KNOWLEDGE THAT THE PROPERTY WAS RESIDENTIAL  
22 REAL PROPERTY IN FORECLOSURE OR SUBJECT TO A TRUSTEE'S SALE, OR IF  
23 APPLICABLE, IN DEFAULT SHALL NOT IMPAIR THE STATUS OF SUCH PERSONS OR  
24 ENTITIES AS BONA FIDE PURCHASERS OR ENCUMBRANCERS FOR VALUE. SUBSECTION E OF  
25 THIS SECTION DOES NOT ABROGATE ANY DUTY OF INQUIRY THAT EXISTS AS TO RIGHTS  
26 OR INTERESTS OF PERSONS IN POSSESSION OF THE RESIDENTIAL REAL PROPERTY IN  
27 FORECLOSURE OR SUBJECT TO A TRUSTEE'S SALE OR, IF APPLICABLE, IN DEFAULT. IN  
28 ANY ACTION BROUGHT TO ENFORCE A RESCISSION PURSUANT TO SUBSECTION E OF THIS  
29 SECTION, A COURT MAY AWARD TO A PREVAILING EQUITY SELLER COSTS AND REASONABLE  
30 ATTORNEY FEES.

31 G. AN EQUITY SELLER MAY BRING AN ACTION FOR THE RECOVERY OF DAMAGES OR  
32 EQUITABLE RELIEF AGAINST AN EQUITY PURCHASER FOR A VIOLATION OF SECTION  
33 33-763, SUBSECTION A, B OR E, SECTION 33-765 OR THIS SECTION. A COURT MAY  
34 AWARD TO A PREVAILING EQUITY SELLER ACTUAL DAMAGES PLUS REASONABLE ATTORNEY  
35 FEES AND COSTS. IN ADDITION, THE COURT MAY AWARD EQUITABLE RELIEF OR  
36 INCREASE THE AWARD IN AN AMOUNT NOT TO EXCEED THREE TIMES THE EQUITY SELLER'S  
37 ACTUAL DAMAGES, OR BOTH, IF THE COURT DEEMS SUCH AN AWARD PROPER. ANY ACTION  
38 BROUGHT PURSUANT TO THIS SECTION SHALL BE COMMENCED WITHIN SIX YEARS AFTER  
39 THE DATE OF THE ALLEGED VIOLATION.

40 H. ANY EQUITY PURCHASER WHO:

41 1. WITH INTENT TO DEFRAUD, VIOLATES SUBSECTION A, B, C OR D OF THIS  
42 SECTION OR ENGAGES IN ANY PRACTICE THAT WOULD OPERATE AS CRIMINAL FRAUD OR  
43 DECEIT ON AN EQUITY SELLER, ON CONVICTION, IS GUILTY OF A CLASS 5 FELONY AND  
44 IS SUBJECT TO A FINE OF NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS OR  
45 IMPRISONMENT, OR BOTH.

1           2. KNOWINGLY VIOLATES SUBSECTION A, B, C OR D OF THIS SECTION, ON  
2 CONVICTION, IS GUILTY OF A CLASS 1 MISDEMEANOR AND IS SUBJECT TO A FINE OF  
3 NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS OR IMPRISONMENT, OR BOTH. A  
4 SECOND OFFENSE WITHIN FIVE YEARS IS A CLASS 5 FELONY AND IS SUBJECT TO A FINE  
5 OF NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS OR IMPRISONMENT, OR BOTH.

6           3. IF ACTING IN GOOD FAITH, VIOLATES SUBSECTION A, B, C OR D OF THIS  
7 SECTION IS NOT GUILTY OF THE VIOLATION IF THE EQUITY PURCHASER:

8           (a) ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE THAT THE COMPLIANCE  
9 FAILURE WAS NOT INTENTIONAL AND RESULTED FROM A BONA FIDE ERROR  
10 NOTWITHSTANDING THE MAINTENANCE OF PROCEDURES REASONABLY ADAPTED TO AVOID  
11 SUCH ERRORS.

12           (b) NOTIFIES THE EQUITY SELLER WITHIN NINETY DAYS AFTER THE CONTRACT  
13 DATE OF THE COMPLIANCE FAILURE.

14           (c) MAKES APPROPRIATE RESTITUTION TO THE EQUITY SELLER AND APPROPRIATE  
15 ADJUSTMENTS TO THE TRANSACTION WITHIN NINETY DAYS AFTER THE CONTRACT DATE.  
16 EXAMPLES OF BONA FIDE ERRORS INCLUDE CLERICAL, CALCULATION, COMPUTER  
17 MALFUNCTION AND PROGRAMMING AND PRINTING ERRORS. AN ERROR OF LEGAL JUDGMENT  
18 WITH RESPECT TO A PERSON'S OBLIGATIONS UNDER THIS ARTICLE IS NOT A BONA FIDE  
19 ERROR, NOR IS A FAILURE TO PROVIDE NOTICES OR OTHER MATERIAL INFORMATION  
20 REQUIRED BY THIS ARTICLE.

21           33-765. Mortgage loan transaction; reconveyance; requirements;  
22 definitions

23           A. IN ADDITION TO THE REQUIREMENTS OF THIS ARTICLE, A TRANSACTION  
24 DEEMED TO BE A MORTGAGE LOAN UNDER THIS ARTICLE IS SUBJECT TO ARTICLES 1 AND  
25 2 OF THIS CHAPTER.

26           B. ANY TRANSACTION IN WHICH AN EQUITY SELLER PURPORTS TO GRANT A  
27 RESIDENCE THAT IS IN FORECLOSURE, SUBJECT TO A TRUSTEE'S SALE OR IN DEFAULT  
28 TO AN EQUITY PURCHASER BY ANY INSTRUMENT THAT APPEARS TO BE AN ABSOLUTE  
29 CONVEYANCE AND RESERVES TO THE EQUITY SELLER OR IS GIVEN BY THE EQUITY  
30 PURCHASER AN OPTION TO REPURCHASE CREATES A PRESUMPTION THAT THE TRANSACTION  
31 IS A LOAN TRANSACTION, WHICH MAY BE OVERCOME BY CLEAR AND CONVINCING EVIDENCE  
32 TO THE CONTRARY, AND THAT THE PURPORTED ABSOLUTE CONVEYANCE IS A MORTGAGE OR  
33 DEED OF TRUST.

34           C. AN EQUITY PURCHASER SHALL NOT ENTER INTO A RECONVEYANCE ARRANGEMENT  
35 UNLESS:

36           1. THE EQUITY PURCHASER VERIFIES BY APPROPRIATE DOCUMENTATION THAT THE  
37 EQUITY SELLER HAS OR IS LIKELY TO HAVE A REASONABLE ABILITY TO PAY FOR THE  
38 SUBSEQUENT CONVEYANCE OF AN INTEREST BACK TO THE EQUITY SELLER. IN THE CASE  
39 OF A LEASE WITH AN OPTION TO PURCHASE, PAYMENT ABILITY ALSO INCLUDES THE  
40 REASONABLE ABILITY TO PURCHASE THE PROPERTY WITHIN THE TERM OF THE OPTION TO  
41 PURCHASE. THERE IS A REBUTTABLE PRESUMPTION THAT THE EQUITY PURCHASER HAS  
42 NOT VERIFIED REASONABLE PAYMENT ABILITY IF THE EQUITY PURCHASER HAS NOT  
43 OBTAINED DOCUMENTS OTHER THAN A STATEMENT BY THE EQUITY SELLER OF ASSETS,  
44 LIABILITIES AND INCOME. THE STANDARD FOR DETERMINING A REASONABLE ABILITY TO

1 PAY SHALL BE THE SAME GUIDELINES AS SET FORTH BY THE UNITED STATES DEPARTMENT  
2 OF HOUSING AND URBAN DEVELOPMENT'S FEDERAL HOUSING ADMINISTRATION.

3 2. THE EQUITY PURCHASER AND THE EQUITY SELLER COMPLETE A CLOSING FOR  
4 ANY RECONVEYANCE ARRANGEMENT IN WHICH THE EQUITY PURCHASER OBTAINS A DEED OR  
5 MORTGAGE FROM AN EQUITY SELLER. FOR THE PURPOSES OF THIS PARAGRAPH,  
6 "CLOSING" MEANS AN IN-PERSON MEETING TO COMPLETE FINAL DOCUMENTS INCIDENT TO  
7 THE SALE OF THE REAL PROPERTY OR CREATION OF A MORTGAGE OR DEED OF TRUST ON  
8 THE REAL PROPERTY CONDUCTED BY A LICENSED ESCROW AGENT OR AN ATTORNEY WHO IS  
9 NOT EMPLOYED BY OR AN AFFILIATE OF THE EQUITY PURCHASER.

10 3. THE EQUITY PURCHASER OBTAINS WRITTEN CONSENT FROM THE EQUITY SELLER  
11 BEFORE THE EQUITY PURCHASER GRANTS ANY INTEREST IN THE PROPERTY TO ANYONE  
12 ELSE DURING THE TIME THE EQUITY SELLER MAINTAINS AN INTEREST IN THE PROPERTY,  
13 INCLUDING AN OPTION TO REPURCHASE.

14 4. THE EQUITY PURCHASER NOTIFIES ALL EXISTING DEED OF TRUST OR  
15 MORTGAGE LIEN HOLDERS OF THE EQUITY PURCHASER'S INTENT TO ACCEPT CONVEYANCE  
16 OF AN INTEREST IN THE PROPERTY FROM THE EQUITY SELLER AND FULLY COMPLIES WITH  
17 ALL TERMS AND CONDITIONS CONTAINED IN THE DEED OF TRUST OR MORTGAGE LIEN  
18 DOCUMENTS, INCLUDING DUE-ON-SALE PROVISIONS OR MEETING ALL QUALIFICATION  
19 REQUIREMENTS FOR ASSUMING THE REPAYMENT OF THE MORTGAGE OR DEED OF TRUST.

20 D. AN EQUITY PURCHASER SHALL NOT ENTER INTO REPURCHASE OR LEASE TERMS  
21 AS PART OF THE RECONVEYANCE ARRANGEMENT THAT ARE UNFAIR OR COMMERCIALY  
22 UNREASONABLE AND SHALL NOT ENGAGE IN ANY OTHER UNFAIR OR UNCONSCIONABLE  
23 CONDUCT.

24 E. AS PART OF A RECONVEYANCE ARRANGEMENT, AN EQUITY PURCHASER SHALL  
25 EITHER:

26 1. ENSURE THAT TITLE TO THE RESIDENCE IS RECONVEYED TO THE EQUITY  
27 SELLER.

28 2. MAKE A PAYMENT TO THE EQUITY SELLER IN AN AMOUNT OF AT LEAST  
29 EIGHTY-TWO PER CENT OF THE FAIR MARKET VALUE OF THE PROPERTY WITHIN ONE  
30 HUNDRED TWENTY DAYS AFTER EITHER THE EVICTION OF OR VOLUNTARY RELINQUISHMENT  
31 OF POSSESSION OF THE RESIDENCE BY THE EQUITY SELLER. THE EQUITY PURCHASER  
32 SHALL MAKE A DETAILED ACCOUNTING OF THE BASIS FOR THE PAYMENT AMOUNT OR A  
33 DETAILED ACCOUNTING OF THE REASONS FOR FAILURE TO MAKE A PAYMENT, INCLUDING  
34 PROVIDING WRITTEN DOCUMENTATION OF EXPENSES, WITHIN THE ONE HUNDRED TWENTY  
35 DAY PERIOD. THE ACCOUNTING SHALL BE ON A FORM PRESCRIBED BY THE DEPARTMENT  
36 OF FINANCIAL INSTITUTIONS. FOR PURPOSES OF THIS SUBSECTION:

37 (a) THERE IS A REBUTTABLE PRESUMPTION THAT AN APPRAISAL BY A PERSON  
38 LICENSED OR CERTIFIED BY AN AGENCY OF THE FEDERAL GOVERNMENT OR THIS STATE TO  
39 APPRAISE REAL ESTATE ESTABLISHES THE FAIR MARKET VALUE OF THE PROPERTY.

40 (b) THE TIME FOR DETERMINING THE FAIR MARKET VALUE AMOUNT SHALL BE  
41 DETERMINED IN THE RECONVEYANCE ARRANGEMENT EITHER AT THE TIME OF THE  
42 EXECUTION OF THE RECONVEYANCE ARRANGEMENT OR AT RESALE TO A BONA FIDE  
43 PURCHASER. IF THE COVERED CONTRACT STATES THAT THE FAIR MARKET VALUE SHALL  
44 BE DETERMINED AT THE TIME OF RESALE, THE FAIR MARKET VALUE SHALL BE THE  
45 RESALE PRICE IF IT IS SOLD WITHIN ONE HUNDRED TWENTY DAYS AFTER THE EVICTION

1 OR VOLUNTARY RELINQUISHMENT OF THE PROPERTY BY THE EQUITY SELLER. IF THE  
2 COVERED CONTRACT STATES THAT THE FAIR MARKET VALUE SHALL BE DETERMINED AT THE  
3 TIME OF RESALE AND THE RESALE IS NOT COMPLETED WITHIN ONE HUNDRED TWENTY DAYS  
4 AFTER THE EVICTION OR VOLUNTARY RELINQUISHMENT OF THE PROPERTY BY THE EQUITY  
5 SELLER, THE FAIR MARKET VALUE SHALL BE DETERMINED BY AN APPRAISAL CONDUCTED  
6 WITHIN TEN DAYS AFTER THE END OF THE ONE HUNDRED TWENTY DAY PERIOD, AND  
7 PAYMENT, IF REQUIRED, SHALL BE MADE TO THE EQUITY SELLER. IF PAYMENT IS NOT  
8 MADE TO THE EQUITY SELLER AT THE TIME, THE FAIR MARKET VALUE SHALL BE  
9 RECALCULATED AS THE RESALE PRICE ON RESALE, AND PAYMENT SHALL BE MADE TO THE  
10 EQUITY SELLER WITHIN FIFTEEN DAYS AFTER RESALE. A DETAILED ACCOUNTING OF THE  
11 BASIS FOR THE PAYMENT AMOUNT SHALL BE MADE WITHIN FIFTEEN DAYS OF RESALE,  
12 INCLUDING PROVIDING WRITTEN DOCUMENTATION OF EXPENSES. THE ACCOUNTING SHALL  
13 BE ON A FORM PRESCRIBED BY THE DEPARTMENT OF FINANCIAL INSTITUTIONS.

14 F. THIS SECTION DOES NOT ABROGATE ANY DUTY OF INQUIRY THAT EXISTS AS  
15 TO RIGHTS OR INTERESTS OF PERSONS IN POSSESSION OF THE RESIDENTIAL REAL  
16 PROPERTY THAT IS IN FORECLOSURE, SUBJECT TO TRUSTEE'S SALE OR IN DEFAULT.

17 G. ALL DEEDS OR CONVEYANCES SUBJECT TO A RECONVEYANCE ARRANGEMENT  
18 SHALL STATE EXPLICITLY ON THE FACE OF THE DOCUMENT THAT THE CONVEYANCE IS  
19 SUBJECT TO A RECONVEYANCE ARRANGEMENT AND SHALL STATE IN THE BODY OF THE  
20 CONVEYANCE INSTRUMENT THE TERMS OF THE RECONVEYANCE ARRANGEMENT. ALL  
21 RECONVEYANCE ARRANGEMENTS MUST BE SIMULTANEOUSLY RECORDED BY THE EQUITY  
22 PURCHASER WITH THE SUBJECT DEED IN THE COUNTY RECORDER'S OFFICE WHERE THE  
23 PROPERTY IS LOCATED.

24 H. FOR THE PURPOSES OF THIS SECTION:

25 1. "CONSIDERATION" MEANS ANY PAYMENT OR THING OF VALUE PROVIDED TO THE  
26 EQUITY SELLER, INCLUDING UNPAID LEASE PAYMENTS OWED BY THE EQUITY SELLER  
27 BEFORE THE DATE OF EVICTION OR VOLUNTARY RELINQUISHMENT OF THE PROPERTY,  
28 REASONABLE COSTS PAID TO THIRD PARTIES NECESSARY TO COMPLETE THE RECONVEYANCE  
29 TRANSACTION, PAYMENT OF MONIES TO SATISFY A DEBT OR LEGAL OBLIGATION OF THE  
30 EQUITY SELLER OR THE REASONABLE COST OF REPAIRS FOR DAMAGE TO THE DWELLING  
31 CAUSED BY THE EQUITY SELLER BEYOND ORDINARY WEAR AND TEAR, BUT DOES NOT  
32 INCLUDE AMOUNTS IMPUTED AS ANY FEE PAID DIRECTLY OR INDIRECTLY TO THE EQUITY  
33 PURCHASER, OR THE EQUITY PURCHASER'S REPRESENTATIVE, INCIDENT TO A  
34 RECONVEYANCE ARRANGEMENT, EXCEPT FOR REASONABLE COSTS PAID TO THIRD PARTIES  
35 NECESSARY TO COMPLETE THE RECONVEYANCE.

36 2. "RESALE" MEANS A BONA FIDE MARKET SALE OF THE PROPERTY SUBJECT TO  
37 THE RECONVEYANCE ARRANGEMENT BY THE EQUITY PURCHASER TO AN UNAFFILIATED THIRD  
38 PARTY.

39 3. "RESALE PRICE" MEANS THE PURCHASE PRICE OF THE PROPERTY ON RESALE.

40 33-766. Limiting provisions

41 ANY PROVISION OF A COVERED CONTRACT THAT ATTEMPTS OR PURPORTS TO LIMIT  
42 THE LIABILITY OF THE EQUITY PURCHASER UNDER THIS ARTICLE IS VOID. INCLUSION  
43 OF THE PROVISION, AT THE OPTION OF THE EQUITY SELLER, SHALL RENDER THE  
44 COVERED CONTRACT VOID. THE EQUITY PURCHASER IS LIABLE TO THE EQUITY SELLER  
45 FOR ALL DAMAGES PROXIMATELY CAUSED BY THE PROVISION. ANY PROVISION IN A

1 COVERED CONTRACT THAT ATTEMPTS OR PURPORTS TO REQUIRE ARBITRATION OF ANY  
2 DISPUTE ARISING UNDER THIS ACT SHALL BE VOID AT THE OPTION OF THE EQUITY  
3 SELLER.

4 33-767. Injunction; civil penalty

5 IN ADDITION TO THE OTHER REMEDIES PROVIDED, IF A VIOLATION OF THIS  
6 ARTICLE OCCURS, APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME  
7 OF THE PEOPLE OF THIS STATE TO A COURT OR JUSTICE HAVING JURISDICTION BY A  
8 SPECIAL PROCEEDING TO ISSUE AN INJUNCTION AND, ON NOTICE TO THE DEFENDANT OF  
9 AT LEAST FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF THE VIOLATIONS.  
10 IF THE COURT OR JUSTICE DETERMINES THAT THE DEFENDANT HAS VIOLATED THIS  
11 ARTICLE, THE COURT OR JUSTICE MAY ISSUE AN INJUNCTION ENJOINING AND  
12 RESTRAINING ANY FURTHER VIOLATION WITHOUT REQUIRING PROOF THAT ANY PERSON HAS  
13 ACTUALLY BEEN INJURED OR DAMAGED. IN ANY PROCEEDING, THE COURT MAY MAKE  
14 ALLOWANCES TO THE ATTORNEY GENERAL PURSUANT TO ALL APPLICABLE LAWS OR RULES  
15 AND DIRECT RESTITUTION. IF THE COURT DETERMINES THAT A VIOLATION OF THIS  
16 ARTICLE HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN  
17 TWENTY-FIVE THOUSAND DOLLARS FOR EACH VIOLATION. IN CONNECTION WITH ANY SUCH  
18 PROPOSED APPLICATION, THE ATTORNEY GENERAL MAY TAKE PROOF AND MAKE A  
19 DETERMINATION OF THE RELEVANT FACTS AND ISSUE SUBPOENAS IN ACCORDANCE WITH  
20 ALL APPLICABLE LAWS AND RULES.

21 33-768. Prior lien holder

22 THIS ARTICLE DOES NOT APPLY TO A PRIOR LIEN HOLDER IF THE LIEN WAS  
23 PROPERLY RECORDED BEFORE THE EXECUTION OF ANY COVERED CONTRACT BY BOTH THE  
24 EQUITY SELLER AND THE EQUITY PURCHASER, AND THIS ARTICLE SHALL NOT IMPAIR ANY  
25 EQUITY OR OTHER AVAILABLE RIGHTS OF ANY PRIOR LIEN HOLDER.

26 33-769. Article provisions not exclusive; rights and  
27 obligations not affected; waivers void; severability

28 A. THIS ARTICLE IS NOT EXCLUSIVE AND IS IN ADDITION TO ANY OTHER  
29 REQUIREMENTS, RIGHTS, REMEDIES AND PENALTIES PROVIDED BY LAW.

30 B. THIS ARTICLE DOES NOT AFFECT OR ALTER THE RIGHTS AND OBLIGATIONS OF  
31 A MORTGAGOR AND A MORTGAGEE WITH RESPECT TO A MORTGAGE, OR A TRUSTOR, TRUSTEE  
32 OR BENEFICIARY WITH RESPECT TO A DEED OF TRUST.

33 C. ANY WAIVER OF ANY PROVISION OF THIS ARTICLE IS VOID AND  
34 UNENFORCEABLE AS CONTRARY TO PUBLIC POLICY.

35 D. IF ANY PROVISION OF THIS ARTICLE OR ANY APPLICATION OF THIS ARTICLE  
36 TO ANY PERSON OR CIRCUMSTANCES IS HELD UNCONSTITUTIONAL, THE REMAINDER OF  
37 THIS ARTICLE AND THE APPLICATION OF ITS PROVISIONS TO OTHER PERSONS AND  
38 CIRCUMSTANCES SHALL NOT BE AFFECTED.

39 Sec. 4. Short title

40 This act shall be known and may be cited as the "Arizona home equity  
41 theft prevention act".